MONTANA LEGISLATIVE HISTORY

Chapter 220 19 93

Bill H 432 S _____ Original bill & history ✓ C

H. Committee on Fish & Game			S. Committee on Fish & Game		
Hearing Date(s)	Feb 11	✓ C	Hearing Date(s)	Mar 16	✓ C
	Feb 16	✓ C			C
		C			C
		C			C
Date Out	Feb 17	✓ C		Mar 16	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO STATE ADMINISTRATION		
3/10	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/12	2ND READING CONCURRED	48	0
3/13	3RD READING CONCURRED	46	1
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	96	2
4/02	3RD READING AMENDMENTS CONCURRED	92	8
4/07	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/22	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	97	3
4/22	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	97	3
	TRANSMITTED TO SENATE		
4/24	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/24	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/28	SIGNED BY SPEAKER		
4/28	SIGNED BY PRESIDENT		
4/29	TRANSMITTED TO GOVERNOR		
5/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 620		
	EFFECTIVE DATE: 05/07/93		

HB 432 INTRODUCED BY SMITH, ET AL.

GENERALLY REVISE OUTFITTER AND GUIDE LAWS

BY REQUEST OF BOARD OF OUTFITTERS

2/02	INTRODUCED		
2/02	REFERRED TO FISH & GAME		
2/02	FIRST READING		
2/02	FISCAL NOTE REQUESTED		
2/08	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/11	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	87	11
2/23	3RD READING PASSED	89	10
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO FISH & GAME		
3/16	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	34	9
3/19	3RD READING CONCURRED	43	4
	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 220		
	EFFECTIVE DATE: 07/01/93		

LC 1121/01

HOUSE BILL NO. 432

INTRODUCED BY Smith

BY REQUEST OF THE BOARD OF OUTFITTERS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS APPLICABLE TO THE LICENSING AND PRACTICES OF OUTFITTING AND GUIDING AND THE POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; EXTENDING THE GENERAL TIME LIMITATION APPLICABLE TO PROSECUTION OF MISDEMEANOR OUTFITTER AND GUIDE VIOLATIONS; ALLOWING THE BOARD OF OUTFITTERS TO HIRE QUALIFIED INVESTIGATORS; ESTABLISHING AN ADMINISTRATIVE PENALTY FOR OUTFITTER AND GUIDE VIOLATIONS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-307, 37-47-308, 37-47-309, 37-47-310, 37-47-341, 37-47-343, 37-47-344, 37-47-402, 37-47-404, AND 45-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-47-101, MCA, is amended to read:

"**37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of outfitters provided for in 2-15-1883.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a resident.

(5) "Outfitter" means any person, except a person providing services on real property that he the person owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish or other recreational activities; or

(d) for consideration aids or assists any person in locating or pursuing any game animal; or

(e) for consideration furnishes guiding services for mountain, rural, or other recreational excursions, outings, or trips.

(6) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

(7) "Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes ~~only~~ personal guiding services ~~in--assisting--a person-to-hunt-or-take-game-animals-or-fish-and-who-does-not furnish-any-facilities,-transportation,-or-equipment~~ for the conduct of outdoor recreational activities directly related to the nature of activities for which the employing outfitter is licensed; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he the person owns ~~in assisting-a-person-to-hunt-or-take-game-birds--or--fish~~ for the conduct of outdoor recreational activities directly related to the nature of activities for which the contracting outfitter is licensed. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.

(8) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 2. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to

LC 1121/01

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet ~~shall~~ must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including but not limited to rules prescribing all requisite qualifications for licensure. These qualifications must include training, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(c) any reasonable rules, not in conflict with this

welfare of those persons using the services of outfitters and for the protection of landowners, and the general public, and outfitters' employees, agents, and representatives;

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause."

Section 3. Section 37-47-301, MCA, is amended to read:

"37-47-301. License required -- services performed -- standards. (1) No A person may not act as an outfitter or professional guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the department board.

(3) Outfitters, professional guides, and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as outfitters or professional guides.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for

these lands.

(5) An outfitter Outfitters may not willfully and substantially misrepresent his their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients.

(7) A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership."

Section 4. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof of a license shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform his the duties as of an outfitter as prescribed by the board;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his the outfitter's clients (all equipment and facilities shall be are subject to inspection at all reasonable times and places by the

board or its designated agent);

(3) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated ~~thereunder~~ under those laws as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution ~~thereof~~ of the ecosystem;

(4) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of any state or the United States within the past 5 years;

(5) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, professional guide's, or conservation license from the state of Montana;

(6) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the ~~license year immediately~~ 2 years preceding that for which the application is made;

(8) have not committed any negligent act or misconduct

LC 1121/01

while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of ~~such~~ the outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. ~~No~~ A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

~~(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.~~"

Section 5. Section 37-47-303, MCA, is amended to read:

"37-47-303. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform ~~his~~ the duties as of a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of $100

or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No A person may not apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

(2) A professional guide shall have been issued a valid wildlife conservation license."

Section 6. Section 37-47-304, MCA, is amended to read:

"**37-47-304. Application.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the board which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of ~~his~~ the applicant's principal place

of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which ~~he~~ the applicant has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed or retained as an independent contractor that the professional guide is in fact to be employed or retained as an independent contractor by ~~such~~ the outfitter and stating that the outfitter recommends the applicant for ~~his~~ the applicant's qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by ~~such~~ the applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands ~~he~~ the applicant will provide services or establish hunting camps.

(2) Applications for an outfitter's license ~~shall~~ must be in the name of an individual person only. Applications involving corporations, proprietorships, or partnerships ~~shall~~ must be made by one individual person who qualifies under the provisions of this part; ~~any~~. Any license issued pursuant ~~thereto shall~~ to this part must be in the name of that person; ~~and the~~. The license ~~shall~~ must specifically state that the ~~same~~ license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of ~~such~~ a license is binding upon the individual person and the corporation, proprietorship, or partnership ~~or corporation~~ for the use and benefit of which the license was originally issued.

(3) Application ~~shall~~ must be made to and filed with the board.

(4) Only one application for an outfitter's ~~or professional guide's~~ license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 7. Section 37-47-305, MCA, is amended to read:

"37-47-305. **Outfitter's examination.** Each applicant for an outfitter's license shall pass a standard examination administered by the board or its agent; ~~which~~. The

examination ~~shall~~ must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing ~~such~~ the services. The examination ~~shall~~ must test the applicant's knowledge of subjects ~~which shall~~ that apply to the type of license applied for ~~in~~ and may include the following subjects:

(1) federal and state fish and game laws and regulations;

(2) practical woodsmanship;

(3) general knowledge of big game;

(4) field preparation of trophies;

(5) care of game meat;

(6) use of outfitter's gear as listed on the application;

(7) knowledge of area and terrain;

(8) knowledge of firearms;

(9) federal and state regulations as applicable to outfitting;

(10) first aid;

(11) boat safety;

(12) water safety;

(13) care and safety of livestock."

Section 8. Section 37-47-307, MCA, is amended to read:

"37-47-307. **Investigation of applicant -- issuance or**

denial of license. (1) The board shall investigate each applicant for an outfitter's or professional guide's license and determine ~~his~~ the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications ~~herein~~ stated in this section. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses ~~shall~~ must be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter and renewal deadlines and fees imposed by rule of the board~~,~~ and completing an application for license renewal on a form provided by the board~~,--and payment--of--the--renewal--fee,-but-is-exempt-from-having-to retake-the-written-examination.~~

~~(5)--An-outfitter-licensee-must-make-an-application--for license--renewal-by-January-1-of-the-license-year.-A-penalty fee-of-$50-will--be--charged--in--addition--to--the--regular~~

~~resident--or--nonresident--outfitter's--license--fee--if-the application-for-such-license-is-not-completed--and--made--by January--1--of--the--license--year.-This-subsection-does-not apply-to-a-new-applicant-for-an-outfitter's-license.~~"

Section 9. Section 37-47-308, MCA, is amended to read:

"37-47-308. ~~Kinds of licenses. (1) After-receipt-of-the application--and--when~~ When all the conditions ~~and requirements~~ of ~~this-part~~ licensure have been satisfied, the board shall issue ~~either--of--the--following--licenses, depending-upon-its-determination-of-the-applicant's--ability and--the--service--that--the--applicant-can-perform-with-the equipment-listed-on-his-application.~~

~~(a)--a-general-license-authorizing-him--to--perform--all the--functions--of--an--outfitter-as-that-term-is-defined-in 37-47-101;-or~~

~~(b)--a-special-license-authorizing-him-to--perform--only the--function--of-outfitting-listed-on-the-license~~ a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license ~~shall~~ must be in the form prescribed and ~~shall-be~~ is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license ~~shall~~

must be issued upon reapplication ~~thereof~~."

Section 10. Section 37-47-309, MCA, is amended to read:

"37-47-309. **Professional guide's license.** (1) For the purposes of this part, a person may serve as a professional guide under an outfitter's license, after submitting ~~his~~ an application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of ~~such~~ the license is employed or retained ~~as an independent contractor~~ by the endorsing outfitter."

Section 11. Section 37-47-310, MCA, is amended to read:

"37-47-310. **Transfer or amendment of outfitter's license.** (1) ~~No~~ An outfitter's license may not be transferred during any license year.

(2) An individual person may, upon proper showing, have ~~his~~ that person's outfitter's license amended to indicate that ~~he is holding~~ the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, ~~the~~ an immediate ~~members~~ member of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or

LC 1121/01

personal representative of the estate sells the outfitting business or obtains relicensure ~~therefor~~ of the business."

Section 12. Section 37-47-341, MCA, is amended to read:

"37-47-341. **Grounds for suspension or revocation of license.** Every license or right to apply for and hold ~~such~~ the license may be denied, suspended, or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of ~~the~~ any state ~~of Montana~~ or ~~of~~ the United States within the past 5 years;

(6) a substantial breach of any contract with any person ~~utilizing~~ using the services of the license holder provided that ~~such~~ the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an

unlicensed ~~professional~~ guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of ~~such~~ the outfitter or professional guide; or

(9) misconduct as defined by board rule."

Section 13. Section 37-47-343, MCA, is amended to read:

"37-47-343. Appeal procedure. Any person who feels aggrieved by ~~the--denial--of~~ a final order of the board denying issuance of, ~~a-license-or-suspension--or--revocation~~ of suspension of, or revocation of a license as an outfitter or professional guide may ~~appeal-to-the-district-court-of-the-county-of-his-residence-within-30-days-after-the-date-of-such-action-by-filing-with-the-clerk-of-said-court-a--notice-of-appeal-briefly-setting-forth-the-action-complained-of-and-appealed--from.--Summons--and--copy--of-the-notice-of-appeal-shall-be-served-on-the--board,--and--all--proceedings--shall-conform--to--the--code--of--civil--procedure-of-the-state-of-Montana.-Upon-such-appeal,-the-action-shall-be-by--trial--de-novo,--and--upon--demand--in--writing,-either-party-shall-be-entitled-to-trial-by-jury.-The-court-may-sustain-or--reverse-the--action--of--the--board-or-take-such-other-action-as-the-court-may-deem-just-and-proper.-If-the-board--or--the--court-has--ordered--a-stay-of-any-revocation-or-suspension-and-the-board's-revocation-or-suspension-is-thereafter-sustained--by-~~

~~the--court,--the--period--of--suspension-or-revocation-shall-begin-with-the-first-day-after-the-court's-action-sustaining-the-decision-of-the-board~~ petition for judicial review as provided in Title 2, chapter 4, part 7."

Section 14. Section 37-47-344, MCA, is amended to read:

"37-47-344. Penalties -- disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding $500.

(2) A person who represents ~~himself~~ to the public that the person is as an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $200 and not more than ~~$500~~ $1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and

trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided."

NEW SECTION. **Section 15.** **Administrative penalty.** The board may assess an administrative penalty of not more than $500 for each violation of this chapter or a rule adopted under this chapter, subject to the procedures set out in 37-47-342 and 37-47-343.

Section 16. Section 37-47-402, MCA, is amended to read:

"37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of ~~his~~ the ~~respective~~ profession while engaging in providing the services authorized to be performed by a licensed member of ~~his~~ the profession;

(2) comply with all standards adopted by rule by the ~~department of fish, wildlife, and parks~~ board."

Section 17. Section 37-47-404, MCA, is amended to read:

LC 1121/01

"37-47-404. Responsibility for violations of law. (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of ~~such~~ the outfitter ~~shall~~ be is equally responsible with any person or party employing ~~him~~ the person as an outfitter for any violation of fish and game laws; ~~any such~~ unless the violation is reported to a peace officer by the outfitter, agent, or employee and the outfitter, agent, or employee was not an active participant. An outfitter or agent or employee of ~~such~~ an outfitter who ~~shall~~ willfully ~~fail to or refuse~~ fails or refuses to report any violation of fish and game laws ~~shall be~~ is liable to the penalties ~~as herein~~ provided in this section. If any professional guide ~~commits any violation of~~ violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter ~~then~~ employing ~~such~~ the guide, the outfitter is legally responsible for ~~such~~ the violation for all purposes under the laws or regulations if the outfitter fails to report ~~any such~~ the violation to the proper authority.

(2) An outfitter or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation

must be reported to a peace officer at the earliest possible opportunity.

(3) No A person may not hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana."

Section 18. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The ~~period~~ periods prescribed in subsection (2) ~~is~~ are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent,

during the minority or incompetency or within 1 year after the termination ~~thereof~~ of minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not ~~himself~~ a party to the offense or, in the absence of ~~such~~ discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) ~~shall~~ must be extended in a prosecution for unlawful use of a computer, and prosecution ~~shall~~ must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not ~~himself~~ a party to the offense or, in the absence of ~~such~~ discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides

under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

~~(7)~~(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

NEW SECTION. **Section 19.** **Investigators -- qualifications.** (1) The department may hire investigators to assist the board in investigation of any provision of this chapter.

(2) An investigator must:

(a) be a citizen of the United States and a resident of Montana;

(b) have knowledge of outfitting and guiding;

(c) have not less than 2 years' experience as a licensed private investigator, detective, special agent, or peace officer of a city, county, or state or a federal agency; and

(d) meet the minimum qualifying standards for employment of peace officers promulgated by the board of crime control.

LC 1121/01

NEW SECTION. **Section 20.** **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 21.** **Codification instruction.** [Sections 15 and 19] are intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [sections 15 and 19].

NEW SECTION. **Section 22.** **Effective date.** [This act] is effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0432, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: The bill generally revises the laws applicable to the licensing practices of outfitting and guiding and the powers and duties of the Board of Outfitters; extending the general time limitation applicable to prosecution of misdemeanor outfitter and guide violations; allowing the board to hire qualified investigators; establishing an administrative penalty for outfitter and guide violations.

ASSUMPTIONS:

1. The budget level will be the current and modified levels recommended in the executive budget for FY94 and FY95 and that the revenue will be the same as in FY92.
2. The regulations of the board will expand to include persons who conduct scenic, whitewater, and other recreational excursions for compensation.
3. There will be 100 additional licensees as a result of this legislation and the costs would be covered by a total of 800 licensees at an increased cost of $136 each.
4. The board will need one full-time investigator, grade 12, travel and other operating expenses, plus a computer, desk and file cabinet in the first year.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	0	1.00	1.00	0	1.00	1.00
Personal Services	6,860	32,602	25,742	7,360	33,102	25,742
Operating Expenses	185,881	265,181	79,300	183,924	262,524	78,600
Capital Outlay	0	3,600	3,600	0	0	0
Total	192,741	301,383	108,642	191,284	295,626	104,342
Revenues:						
Fees	150,050	258,850	108,800	150,050	258,850	108,800
Net Impact:	(42,691)	(42,533)	158	(41,234)	(36,776)	4,458

Dave Lewis 2-6-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Liz Smith 2-9-93
LIZ SMITH, PRIMARY SPONSOR DATE

Fiscal Note for HB0432, as introduced

HB 432

HEARING ON HB 432

Opening Statement by Sponsor:

REP. LIZ SMITH, House District 48, Deer Lodge, presented HB 432 at the request of the Montana Board of Outfitters. The 1987 Legislature transferred the Montana Board of Outfitters from the jurisdiction of the Fish, Wildlife, and Parks Department to the Department of Commerce. The transfer occurred because of a conflict of interest. HB 432 attempts to provide housekeeping measures for the Board of Outfitters. Several organizations were involved in the drafting of the bill one year ago.

Proponents' Testimony:

Ms. Jean Johnson, Montana Outfitters and Guides Association (MOGA), distributed written testimony (EXHIBIT 7). She distributed a copy of MOGA's proposed amendments (EXHIBIT 8) and a copy of the rationale developed by MOGA (EXHIBIT 9).

Mr. Max Chase, Chairman of the Board of Outfitters, declared his support of HB 432.

Mr. Matthew Cohen, Director of Travel Montana, reported there is a lot of concern regarding cattle drives and wagon trains. He felt the people who organize such events should be considered outfitters. There have been many complaints regarding these events by consumers. After investigation, he found that there are no regulations on cattle drives. He asked if the definition of an outfitter is expanded, cattle drives should be considered.

Mr. Robin Cunningham, Fishing Outfitters Association of Montana, said that the organization is satisfied with the current bill form and urged passage of HB 432.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. MOLNAR asked Ms. Johnson if a dude ranch wants to rent horses or if someone wants to give the owner of a horse money in exchange for hauling the game animal, would an outfitter license be required. Ms. Johnson replied if the person wanting the game animal hauled tipped a person, it would not be considered a commercial interest. She is unaware of how many dude ranches have outfitting licenses. A proposed amendment will delete Section 1 entirely. If the amendment is passed, it will allow the Board of Outfitters to license operations such as dude ranches.

REP. BOB REAM asked Mr. Cohen if cattle drives were included in Section 1. Mr. Cohen said he thought that it was, but Section 1

has proposed amendments. In his opinion, it should be included.

VICE CHAIRMAN CHASE HIBBARD asked **Ms. Johnson** if Section 19 would be deleted by the proposed amendments. **Ms. Johnson** replied yes. In the early stages of writing the bill, the Board wanted this provision. As time progressed, they decided otherwise.

Closing by Sponsor:

REP. SMITH reported that there is a fiscal note for HB 432. HB 432 contained provisions that were important for the efficient operation of the outfitter industry. She thanked the committee for the hearing and urged support of the bill.

HEARING ON HB 498

Opening Statement by Sponsor:

REP. ALVIN ELLIS, House District 84, Red Lodge, stated HB 498 sets up wildlife enhancement and management areas. The bill is proposed by the Montana Stockgrowers Association. The fee would be set at $300. Since there is a sunset clause, he would be receptive to an amendment that would change the fee to $100 per year.

Proponents' Testimony:

Mr. Chuck Rein, Rancher, distributed written testimony **(EXHIBIT 10)**.

Mr. Dan Weppler, Rancher, stated that the reason wildlife professionals have always been concerned about private land is because of the impact it has on wildlife populations. He felt that it was important to withhold personal values lest they interfere with doing what is best for wildlife populations. A benefit from well-managed private land is well-managed adjacent public lands. Other wildlife enterprises are photography, viewing, habitat study, and education. In his opinion, wildlife benefits from fee hunting. He felt it is a win situation for all those involved.

Mr. Harold Billings, Sportsman, declared his support of HB 498 and circulated written testimony **(EXHIBIT 11)**.

Mr. Jack Stone, Citizen, distributed written testimony **(EXHIBIT 12)**.

Mr. Bill Meyers, Agriculture Preservation Association, expressed their support of HB 498. He reported this concept is working in California, New Mexico, and Oregon. If you own land in Montana, you must expect to have wildlife. Recently, wildlife population has soared to record highs. Wildlife populations have become healthy through a cooperative effort of sportsmen and landowners. **Mr. Meyers** urged passage of the bill.

HOUSE OF REPRESENTATIVES

FISH & GAME COMMITTEE

ROLL CALL DATE 2/11/93

NAME	PRESENT	ABSENT	EXCUSED
VICE-CHAIRMAN CHASE HIBBARD	✓		
VICE-CHAIRMAN BOB REAM	✓		
REP. BARNHART	✓		
REP. CLARK	✓		
REP. DAILY	✓		
REP. ELLIOT	✓		
REP. GRIMES	✓		
REP. HANSON	✓		
REP. KNOX	✓		
REP. MCCARTHY	✓		
REP. MOLNAR	✓		
REP. ORR	✓		
REP. RYAN	✓		
REP. SWANSON	✓		
REP. WAGNER	✓		
CHAIRMAN MIKE FOSTER	✓		

MONTANA OUTFITTERS & GUIDES ASSOC.

34 W. Sixth, Suite 2 E • P.O. Box 9070 • Helena, MT 59604 • (406) 449-3578

"Where respect for the resource and a quality experience for the client go hand in hand."

EXHIBIT 1
DATE 2/11/93
HB 432

HB 432

House Fish and Game Committee — Feb. 11, 1993

Testimony of the Montana Outfitters and Guides Association

A year ago, representatives of the outfitting industry — floating/fishing and hunting — sat down with the Board of Outfitters and discussed some areas of concern and some solutions. After working for several months, a legislative package was submitted to the Director of the Department of Commerce and then-Governor Stan Stephens for review and approval. Because of Governor Stephen's commitment to "less" government, the proposal to expand the definition of an outfitter to include those who, for compensation, furnishes guiding services for mountain, rural, or other recreational excursions, outings, or trips, including those conducted on water, was not accepted. **(Section 1. "37-47-101")**

The sections that were approved by the Governor's office — which include authority to hire another staff person — are expressed in HB 82.

The Board of Outfitters agreed to language that expands the definition of an outfitter in response to pressure from the Forest Service and later, from the tourism side of Commerce. The Forest Service has identified over 300 commercial activities that they currently permit without any evidence that these special service providers are trained, insured, experienced, inspected, and certified in first aid and CPR. Yet these providers are offering services to the public on public land for compensation.

The Dept. of Commerce is responding to public pressure regarding wagon trains that operate without the benefit of an outfitter; we will hear testimony from their representatives.

For all these reasons, MOGA agreed to carry a bill that included the definition expansion and several minor adjustments — HB 432.

All of this effort was supervised by a staff attorney who is no longer with the Board of Outfitters. It wasn't until Lance Melton, the Board's new staff attorney, came on board recently, did the Board realize that Section 1 mandates that the Board license all commercial activity. The Board never had a desire to expand to include as many activities as exist today and because HB 82, which authorizes an additional FTE, is stalled in committee, the Board is offering an amendment to **delete Section 1 in its entirety.**

A second amendment is being offered to **delete Section 19 in its entirety.** Section 19 was voted down in a Board meeting last spring; unfortunately, the former staff attorney neglected to delete it from his computer and it simply slipped by without anyone noticing it.

The Montana Outfitters and Guides Assn. supports HB 432 with the amendments and encourages a "Do pass" recommendation from this committee.

EXHIBIT 8
DATE 2/11/93
HB 432

Amendments to House Bill No. 432
White Reading Copy

Requested by Jean Johnson, MOGA
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff
February 9, 1993

1. Title, lines 10 and 11.
Strike: "ALLOWING" on line 10 through "INVESTIGATORS;" on line 11

2. Title, line 13.
Strike: "37-47-101,"

3. Page 1, line 20 through page 3, line 22.
Strike: section 1 in its entirety
Renumber: subsequent sections

4. Page 23, line 11 through line 25.
Strike: section 19 in its entirety
Renumber: subsequent sections

5. Page 24, line 8.
Strike: "[Sections 15 and 19] are"
Insert: "[Section 14] is"

6. Page 24, line 10.
Strike: "[sections 15 and 19]"
Insert: "[section 14]"

EXHIBIT 7
DATE 2/11/93
HB 432

34 W. Sixth, Suite 2 E • P.O. Box 9070 • Helena, MT 59604 • (406) 449-3578

"Where respect for the resource and a quality experience for the client go hand in hand."

Rational developed by the Montana Outfitters and Guides Association

HB 432 — Rep. Liz Smith

This bill has been written in view of the experience the Montana Board of Outfitters has had since that board was transferred from the jurisdiction of Fish, Wildlife and Parks in 1987 to the Montana Department of Commerce. Those involved in drafting this bill are the Board of Outfitters, its legal counsel, Fishing Outfitters Assn. of Montana, and the Montana Outfitters and Guides Assn. Both associations represent the majority of fishing, floating, and packing outfitters in Montana.

This bill has no personal impact on existing outfitters, but focuses more on the rogue, or illegal, operators. It also allows for the assessment of fines on licensed outfitters and guides, rather than a revocation or suspension of a license.

This bill has 21 sections, including one which provides for an effective date. Of the remaining 20 sections, only three are NEW SECTIONS and one of those deals with standard severability.

Section 1. **"37-47-101"** expands the definition of an outfitter to include those who, for compensation, furnishes guiding services for mountain, rural, or other recreational excursions, outings, or trips, including those conducted on water.

Rational. The Montana Board of Outfitters (hereafter MBO) has included this new language at the request of other agencies who are concerned that special service providers are not trained, insured, bonded, experienced, inspected, and knowledgeable in first aid and CPR, and yet are offering services to the public for compensation. The Forest Service and Dept. of Commerce are two agencies that have expressed concern and we will hear testimony from their representatives.

Section 2. **"37-47-201"** — Powers and duties of the board relating to outfitters and guides. This is a housekeeping measure to more clearly understand the intent of the subsection (b) and (c).

Section 3. **"37-47-301"** — disallows a person from holding an outfitter's license for more than one corporation, proprietorship or partnership, but does not prevent the outfitter from owning more than one business.

Rational.

Section 4. **"37-47-302"** — Outfitter's qualifications. With the exception of subsection (7) and (10), this section provides housekeeping and the intent is not effected.

Subsection (7) makes the qualifications for licensure more restrictive by increasing the length of time preceeding the application process whereby the applicant can not have been adjudged guilty by a court.

Subsection (10) was deleted as unnecessary because it is addressed earlier in the chapter.

Section 5. **"37-47-303"** — Professional guide's qualification. Housekeeping only.

Section 6. **"37-47-304"** — Application. Mostly housekeeping. Subsection (2) includes proprietorships as a necessary addition to "corporations or partnerships" to carry out the original intent which is to connect one individual — one licensed outfitter — to the business.

Section 7. "37-47-305" — Outfitter's examination. Housekeeping only.

Section 8. "37-47-307" — Investigation of applicant, etc. This section has been rewritten as the original language allows for an outfitter to re-license at any time during the current year, simply by submitting to a $50 fine. This is not consistent with other boards and MBO believes that the board should have the authority to write rules that identify a deadline for submitting an outfitter renewal. MBO is required to provide the printed list of licensed outfitters by a certain deadline and renewals should be cognizant of that.

Section 9. "37-47-308" — Kinds of licenses. The licensing categories of "general" and "special" have been removed as MBO feels an outfitter should be licensed for the services he provides and not for the services he does not provide.

Section 10. "37-47-309" — Professional guide's license. Subsection (2) pertains to a licensed guide and not the independent contractor.

Section 11. "37-47-310" — Transfer or amendment of outfitter's license. "Proprietorship" has been added to partnership and corporation throughout, in order to cover all types of owners.

Section 12. "37-47-341" — Grounds for suspension or revocation of license. Subsection (5) clarifies the intent to cover any state, since the United States may only cover federal laws.

Subsection (7) deletes the word "professional" because an unlicensed guide is not a professional.

Subsection (9) allows the board to define "misconduct" by rule.

Section 13. "37-47-343" — Appeal procedure. This part is simplified by adding "a final order of the Board" to suspend or revoke. A licensee may petition for judicial review, a process which is already defined in Title 2, chapter 4, part 7.

Section 14. "37-47-344" — Penalties, disposition of fines. Subsection (1), which has no amendments, provides a $500 fine against a licensed outfitter who violates game laws, and this is a misdemeanor.

Subsection (2) is amended to allow the assessment of a fine of $200 to $1,000 on an individual pretending to be a licensed outfitter or guide, and providing that each day of violation is a separate offense. It allows a judge to assess a high misdemeanor fine to those who are convicted of rogue (or unlicensed) outfitting. Without the stiffer penalty, the fine becomes just another cost of doing business and a more attractive option than quitting the hunt.

It also provides a way for MBO to recover "all prosecution costs, including but not limited to witness transportation and per diem expenses." Because the witness is most often a nonresident hunter, the cost of bringing that individual to Montana to testify is often prohibitive, yet very important to the case.

Subsection (3) provides for handling the revenue generated by the fines. It directs the cost recovered to the state revenue fund for use for the MBO in enforcing this chapter. This subsection is self-explanatory and should help recover MBO's costs.

New subsection (4) stiffens the penalty by making the unlicensed individual reimburse in full, any fees received to the one to whom the illegal outfitter services were provided.

NEW SECTION. Section 15. Administrative penalty. Allows MBO to assess an administrative penalty of up to $500 for each violation of this chapter if found guilty, thus making the violator more responsible for the cost of enforcement. Idaho has the authority to assess up to $5,000 for violation of their laws.

Section 16. "37-47-402" — Duties of outfitters and guides. Housekeeping.

Section 17. "37-47-404" — Responsibility for violations of law. Subsection (1) separates equal responsibility of a person for game violations, providing the violation is reported to a peace officer at the earliest convenience or opportunity.

Subsection (2) charges the outfitter or guide with reporting any known or suspected game violations.

Section 18. "45-1-205" — General time limitation. Mostly housekeeping. NEW subsection (6) extends the time in which an offence can be prosecuted. The present statute of limitations of one year is often inadequate because of the nature of the activities. Often it is necessary to extend an investigation well over a year because of additional violations which may also be more severe in nature, such as felony game violations tied to the Lacey Act. The nature of these violations may cause the investigation to be extended to account for all the illegal activities. It was this same logic that enabled the Dept. of Fish, Wildlife and Parks to extend their statute of limitations to three years. Game violations are often tied to illegal outfitting activities.

NEW SECTION. **Section 19.** Investigators, qualifications. Allows the Dept. of Commerce to hire investigators to assist the board in investigation of any provisions of the chapter, and provides for qualifications. Currently, MBO can hire investigators on a contract basis.

NEW SECTION. **Section 20.** standard severability language.

NEW SECTION. **Section 21.** Effective date: July 1, 1993

Discussion:

REP. WAGNER asked why it was necessary for the bill to have an immediate effective date. REP. ELLIOTT said that if the language regarding the effective date were omitted, the bill would take effect in the next fiscal year and would impact the FWP Department's budget.

REP. CHASE HIBBARD asked REP. ELLIOTT what kind of precedent might be set for recreational properties around the state and if areas, other than the ones described, would be affected. REP. ELLIOTT said he did not know of other parks which would be affected. He did not believe there would be any challenges made by the public regarding Department of State Land and FWP Department agreements. REP. HIBBARD asked if there were other state lands which would qualify under HB 607. REP. ELLIOTT said that he did not know.

REP. HANSON commented that she had asked the Department of State Lands if additional areas would qualify under HB 607. Their response was that four or five other parks could qualify. REP. ELLIOTT asked if the parks she spoke of are currently leased to the FWP Department. REP. HANSON said that according to the Department of State lands, there are four or five parks that the FWP Department could lease.

Vote: HB 607 DO PASS AS AMENDED. Motion passed 12 to 4 with REPS. KNOX, MCCARTHY, HANSON, AND CLARK voting no.

EXECUTIVE ACTION ON HB 381

Motion: REP. BILL RYAN MOVED HB 381 DO PASS.

Motion: REP. RYAN MOVED HB 381 BE AMENDED.

Discussion:

Mr. Sternberg distributed a copy of proposed amendments (EXHIBIT 3). He explained that the amendments delay the effective date until March 1, 1994, and the change would be noted in the title of the bill.

Vote: AMENDMENTS DO PASS. Motion carried unanimously.

Motion/Vote: REP. RYAN MOVED HB 381 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 432

Motion: REP. HANSON MOVED HB 432 DO PASS.

Motion: REP. MCCARTHY MOVED HB 432 BE AMENDED.

Discussion:

Mr. Sternberg distributed a copy of proposed amendments (EXHIBIT 4). The amendments were requested by Ms. Jean Johnson, Montana Outfitters and Guides Association (MOGA). Two amendments strike Sections one and 19. The MOGA decided it did not want to include cattle drives and ~~other~~ recreational excursions under the definition of an outfitter. They also decided against working with the Department of Commerce to hire a full-time investigator. Currently they have the authority to hire an investigator and it would raise outfitting license fees if another investigator were hired. The remaining amendments reflect the changes in the title and in codification instructions.

CHAIRMAN FOSTER asked if the effect of the amendments negate the fiscal note. Mr. Sternberg explained if the amendments were adopted, they would have an impact on the fiscal note. Licenses would not be required for cattle drives and other recreational excursions and one FTE would be eliminated due to not hiring a person for full-time investigative purposes.

REP. MCCARTHY asked Mr. Sternberg if the committee strikes Section one, would the Board of Outfitters lose control over licenses. He stated that MOGA desires to remove Section one from the bill. It is not being repealed from present law.

REP. MOLNAR inquired if the Board of Outfitters is giving up their investigative powers through these amendments. Mr. Sternberg explained that the Board, through the Department of Commerce, is presently able to investigate infractions of outfitting laws. Section 19 provided specific qualifications for an investigator. In removing section 19, it would not affect the present investigative authority of the Board.

REP. BARNHART asked Mr. Sternberg if she understood correctly that cattle drives would no longer be subject to outfitting licensure. Mr. Sternberg said by striking Section one of the bill, licensure is required only of those who conduct activities under current law. The definition will not be expanded.

REP. FRITZ DAILY declared his support of the amendments. However, he has a concern regarding how many additional bills have been introduced allowing the Board to hire additional investigators. He felt the committee should scrutinize HB 432 closely.

REP. SWANSON asked REP. DAILY who pays for an investigator that is hired. REP. DAILY replied that it is paid for out of outfitter license fees.

Vote: AMENDMENTS DO PASS. Motion carried unanimously.

Motion: REP. HANSON MOVED HB 432 DO PASS AS AMENDED.

Discussion:

REP. DAILY asked the committee to look at section 17, pages 19 and 20. He declared that under current law, if the person who has hired an outfitter violates fish and game laws, the outfitter and the person are equally responsible. In the proposed language of HB 432, it does not remain this way. He believed that this should not be done. If a person is with a guide, then no violations should be occurring. He felt HB 432 does more than housekeeping.

REP. HIBBARD asked if the representative from the MOGA could address REP. DAILY's concern. Ms. Johnson said that line nine states "an outfitter, agent, or employee of such an outfitter who willfully fails to report a violation is liable." She explained it is a clarification of language and that an outfitter remains liable. REP. DAILY said that it still concerns him.

REP. MOLNAR believed outfitters should remain responsible for their clients' actions.

REP. HIBBARD commented that "an agent or employee" is being added, but the responsibility remains the same. REP. MOLNAR disagreed, saying the outfitter is responsible only if it is reported to a game warden.

REP. SWANSON pointed out that there is a continuation of the sentence which states, "and the outfitter, agent, or employee is not an active participant." She said that in her interpretation, if the outfitter was an active participant, even if he reports it, he is implicated. The assumption is that the outfitter is an active participant until he proves otherwise.

REP. MCCARTHY referred the committee to subsection two, page 20, of the bill.

CHAIRMAN FOSTER declared in his opinion there were no problems with the language.

REP. WAGNER said he agreed with CHAIRMAN FOSTER.

Vote: ROLL CALL VOTE HB 432 DO PASS AS AMENDED. Motion passed 13 to 3 with REPS. DAILY, MOLNAR, and RYAN voting no.

EXECUTIVE ACTION ON HB 338

Motion: REP. BOB REAM MOVED HB 338 DO PASS.

Discussion:

REP. REAM presented written testimony from Mr. Russ Kilpatrick, Great Bear Adventure (EXHIBIT 5).

Mr. Sternberg distributed copies of an amendment proposed by Mr.

HOUSE OF REPRESENTATIVES

FISH & GAME COMMITTEE

ROLL CALL DATE 2-16-93

NAME	PRESENT	ABSENT	EXCUSED
VICE-CHAIRMAN CHASE HIBBARD	✓		
VICE-CHAIRMAN BOB REAM	✓		
REP. BARNHART	✓		
REP. CLARK	✓		
REP. DAILY	✓		
REP. ELLIOT	✓		
REP. GRIMES	✓		
REP. HANSON	✓		
REP. KNOX	✓		
REP. MCCARTHY	✓		
REP. MOLNAR	✓		
REP. ORR	✓		
REP. RYAN	✓		
REP. SWANSON	✓		
REP. WAGNER	✓		
CHAIRMAN MIKE FOSTER	✓		

HOUSE OF REPRESENTATIVES

FISH & GAME COMMITTEE

ROLL CALL VOTE

DATE 2/16/93 BILL NO. 432 NUMBER 1

MOTION: Bill as amended

NAME	AYE	NO
VICE-CHAIRMAN HIBBARD	✓	
VICE-CHAIRMAN REAM	✓	
REP. BARNHART	✓	
REP. CLARK	✓	
REP. DAILY		✓
REP. ELLIOT	✓	
REP. GRIMES	✓	
REP. HANSON	✓	
REP. KNOX	✓	
REP. MCCARTHY	✓	
REP. MOLNAR		✓
REP. ORR	✓	
REP. RYAN		✓
REP. SWANSON	✓	
REP. WAGNER	✓	
CHAIRMAN FOSTER	✓	

13 3.

EXHIBIT 4
DATE 2/16/93
HB 432

Amendments to House Bill No. 432
White Reading Copy

Requested by Jean Johnson, MOGA
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff
February 9, 1993

1. Title, lines 10 and 11.
Strike: "ALLOWING" on line 10 through "INVESTIGATORS;" on line 11

2. Title, line 13.
Strike: "37-47-101,"

3. Page 1, line 20 through page 3, line 22.
Strike: section 1 in its entirety
Renumber: subsequent sections

4. Page 23, line 11 through line 25.
Strike: section 19 in its entirety
Renumber: subsequent sections

5. Page 24, line 8.
Strike: "[Sections 15 and 19] are"
Insert: "[Section 14] is"

6. Page 24, line 10.
Strike: "[sections 15 and 19]"
Insert: "[section 14]"

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Mr. Speaker: We, the committee on Fish and Game report that House Bill 432 (first reading copy -- white) do pass as amended.

Signed: Mike Foster
Mike Foster, Chair

And, that such amendments read:

1. Title, lines 10 and 11.
Strike: "ALLOWING" on line 10 through "INVESTIGATORS;" on line 11

2. Title, line 13.
Strike: "37-47-101,"

3. Page 1, line 20 through page 3, line 22.
Strike: section 1 in its entirety
Renumber: subsequent sections

4. Page 23, line 11 through line 25.
Strike: section 19 in its entirety
Renumber: subsequent sections

5. Page 24, line 8.
Strike: "[Sections 15 and 19] are"
Insert: "[Section 14] is"

6. Page 24, line 10.
Strike: "[sections 15 and 19]"
Insert: "[section 14]"

Committee Vote:
Yes 13, No 3.

391413SC.Hss

Dave Ross, representing the Montana Audubon Legislative Fund, stated he supported HB 595.

Bill Holdorf, representing Skyline Sportsmen's Association, stated he supported the bill introduced two years ago which was similar to HB 595 and he supported HB 595 in its present form.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Devlin asked Representative Harper if this bill was introduced two years ago. Representative Harper stated the bill Mr. Holdorf referred to was the fish transplant bill. Representative Harper stated HB 595 was a result of that bill.

Closing by Sponsor:

Representative Harper respectfully closed on HB 595 and stated Senator Crippen would carry the bill.

HEARING ON HB 432

Opening Statement by Sponsor:

Representative Liz Smith, House District 48, stated in 1987 the Legislature transferred Montana Board of Outfitters (MBO) from the jurisdiction of the DFWP to the Department of Commerce. This transfer was largely in response to public concerns about a possible conflict of interest between an agency charged with managing the number of licenses, permits, and hunting seasons for Montana's game animals and with managing an industry that uses those permits and has an interest in licenses and seasons. The MBO has been with the Department of Commerce for five years, and over that period of time has recognized several areas needing clarification. Representative Smith stated HB 432 seeks to accomplish housekeeping kinds of things.

Proponents' Testimony:

Max Chase, Chairman of MBO, stated at the end of the 1987 Legislative Session, the MBO was told to figure out what was needed and come back to this Session to identify those needs. Mr. Chase briefly explained what happened to HB 432 in the House and stated many people were involved in coming up with HB 432 as presented to the Committee today. Mr. Chase urged the Committee's support of HB 432.

Opponents' Testimony:

Jerry Strong, representing himself, stated he opposed HB 432. Mr. Strong stated at the time the MBO was transferred to the Department of Commerce, it was said to be for licensing purposes only. Mr. Strong said since that time, the fees have increased astronomically through MBO, and the rules and regulations have changed drastically. Mr. Strong stated, as an outfitter, he has to wade through a mountain of paperwork each year: paperwork he does not have the time for. Mr. Strong stated according to HB 432, his fees would increase 136% in order to hire more people. Mr. Strong stated he reports to 13 government agencies in order to stay in business, and he said it is getting ridiculous. Mr. Strong stated HB 432 would create more bureaucracy which is not needed.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Klampe, referring to page 15, line 15, asked Representative Smith to explain "an outfitter's license may not be transferred during any license year." Representative Smith stated the requirements for the licensure is that the standards of what they are allowed to do is on the application.

Senator Klampe asked Max Chase if an outfitter's license may not be transferred, how the licenses are sold. Mr. Chase stated the license is not a tangible asset; it is not a part of free enterprise. Mr. Chase stated licenses are not transferrable from one outfitter to another.

Senator Klampe asked Mr. Chase if a person has to buy their own license when purchasing an outfitter's business. Mr. Chase stated the person purchasing the business has to apply for his or her own license.

Senator Bianchi asked Mr. Chase if the reason there is no fiscal note is because of the stricken language on page 1, lines 10-11. Mr. Chase stated Senator Bianchi was correct, by taking that portion out of HB 432, there would be no fiscal impact.

Senator Jacobson asked Mr. Chase if the language referred to by Senator Bianchi was stricken because of the addition of an executive director. Mr. Chase said, "yes." Mr. Chase stated there was a mistake made when writing HB 432, and the language referring to the hiring of a private investigator should not have been included.

Senator Devlin asked Mr. Chase what added paperwork would HB 432 involve. Mr. Chase stated there would be no additional paperwork as a result of the passage of HB 432. Mr. Chase stated the

additional paperwork referred to by Mr. Strong was created by the rule-making process and the administrative body.

Closing by Sponsor:

Representative Smith stated HB 432 clarifies the standards needed with regard to license requirements, penalties and fines. Representative Smith urged the Committee's support of HB 432 and stated Senator Beck would carry the bill.

EXECUTIVE ACTION ON HB 381

Discussion:

Valencia Lane stated Representative Ryan and Bob Lane met in the hall to discuss amendments to HB 381 and both parties agreed that no amendments were needed. Ms. Lane stated the parties agree on HB 381 as written.

Senator Klampe asked if HB 381 was necessary if the alternative plan covers the needs of Malmstrom. Senator Crippen stated HB 381 would make the safety course mandatory, whereas the alternative plan would be voluntary.

Senator Bianchi stated there is nothing in the statutes to require someone to take the course.

Motion/Vote:

Senator Christiaens moved HB 381 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY with Senator Forrester voting by proxy.

EXECUTIVE ACTION ON HB 595

Motion/Vote:

Senator Crippen moved HB 595 BE CONCURRED IN. The motion CARRIED 10-1 with Senators Beck voting YES by proxy and Forrester voting NO by proxy.

EXECUTIVE ACTION ON HB 432

Motion/Vote:

Senator Devlin moved HB 432 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY with Senators Beck and Forrester voting by proxy.

ROLL CALL

SENATE COMMITTEE Fish & Game DATE 3-16-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Jacobson	✓		
Senator Bianchi	✓		
Senator Christiaens	✓		
Senator Crippen	✓		
Senator Beck	✓		
Senator Mesaros	✓		
Senator Devlin	✓		
Senator Brenden	✓		
Senator Klompe	✓		
Senator Forrester			✓
Senator Pipinich	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 16, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration House Bill No. 432 (first reading copy -- blue), respectfully report that House Bill No. 432 be concurred in.

Signed: Senator Bob Pipinich
Senator Bob Pipinich, Chair

M - Amd. Coord. Beck

)ATE 3-16-93

ENATE COMMITTEE ON Fish & Game

ILLS BEING HEARD TODAY:. HB 381, HB 595, HB 432

Name	Representing	Bill No.	Check One Support	Oppose
JAMES O. BLOSSOM	FWP HUNTER ED	381		
GARY C. STEWART	FWP HUNTER ED	381		
Erving "Max" Olson	Commerce Board of Addition	432	X	
JERRY STRONG	Self	432		X
BILL HOLDORF	SECF	381	✓	
BILL HOLDORF	SKYLINESPORTSMEN	595	✓	
Bob Lane	DFWP	381 595	neutral ✓	
Clay Landry	MT Trout Unlimited	595	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

10